

R E M A R K S

A. NEW GROUNDS OF REJECTION / STATUS OF CLAIMS

Claims 1-36 are pending.

Only Claims 1 and 25 are rejected.

Upon entry of this Amendment, Claims 1, 6, 25, and 31 will be amended without prejudice or disclaimer.

In its Decision on Appeal mailed November 30, 2005, the Board reversed all of the Examiner's rejections under 35 U.S.C. § 103.

The Board also included new grounds of rejection for only independent Claims 1 and 25 as anticipated by Roberts (U.S. Patent No. 5,772,510).

Appellants submit this Amendment per Board Rule 50(b)(1) in order to avoid termination of the appeal as to rejected Claims 1 and 25.

B. SECTION 102 REJECTIONS

1. Claims 1 and 6

Appellants respectfully disagree with the Board's finding that Roberts teaches or suggests *allocating a portion of a ticket, the portion being based on the monetary value*. First, the Board does not indicate evidence of record that *a portion of a ticket* would have been interpreted, by one of ordinary skill in the art in accordance with its ordinary meaning, as descriptive of the whole of a ticket. Appellants do not necessarily disagree here with the Board's finding on that point, but note that it seems unlikely that one of only ordinary skill in the art, upon considering Roberts, would have found in it the suggestion that the vending or sale of a lottery ticket for its full price should be understood, customarily and ordinarily, as allocating a portion of that ticket.

Second, even accepting the Board's interpretation of "portion of a ticket," Roberts does not seem to suggest that the allocation or designation of some portion (whole or less than whole) of a ticket could be somehow based on a determined monetary value. If Roberts discloses only selling a whole ticket at a fixed, predetermined value (as Appellants understand it), it does not suggest in any way that the "wholeness" of the purchased ticket has anything to do with, requires, or is somehow based on, the fixed purchase price. To modify Roberts to provide for such consideration would add unnecessary complexity to a system that is wholly devoted only to (and has no contemplation of anything other than) full price tickets. cannot reasonably suggest the desirability of a feature in which thehas

anything to do with how the “wholeness” of that ticket has “allocating” or setting apart that whole ticket *based on* a determined monetary value.

Nonetheless, Appellants have in this Amendment amended Claims 1 and 6 without prejudice or disclaimer to recite that the ticket is associated with a predetermined price, and in which the predetermined price is greater than the monetary value. Appellants intend to pursue the originally-claimed subject matter of Claims 1 and 6 in one or more continuing applications. Roberts does not teach or suggest allocating a portion of a ticket based on a monetary value that is less than a predetermined price of that ticket. Some embodiments of the present invention, however, allow for wherein an allocated portion (e.g., 1%, \$0.27, \$1.77, or even 100% (in accordance with the Board’s construction of “portion”)) of a ticket is based on a monetary value that is less than a predetermined price of the ticket (e.g., \$1, \$2, \$5). For instance, an allocated portion may be 95% or 100% of a \$1 ticket based on a determined monetary value of \$0.90 (e.g., in a round-up scenario).

Appellants respectfully request the withdrawal of the Section 102 rejection of Claim 1.

2. Claims 25 and 31

Although we do not necessarily agree with the Board’s rejection of Claim 25, Claims 25 and 31 have been amended without prejudice or disclaimer. Appellants intend to pursue the originally-claimed subject matter of Claims 25 and 31 in one or more continuing applications.

Roberts does not teach or suggest a supply of tickets having an identical ticket price, but having different unallocated portions. Nothing in the Board’s Decision indicates a finding to the contrary.

Appellants respectfully request the withdrawal of the Section 102 rejection of Claim 25.

3. Additional Comments

Our silence with respect to the Board’s other various assertions not explicitly addressed in this paper, including assertions of what the cited reference(s) teach or suggest, or the Board’s interpretation of claimed subject matter, is not to be understood necessarily as agreement.

C. CONCLUSION


It is submitted that all of the claims are in condition for allowance. The Examiner's early re-examination and reconsideration are respectfully requested.

If the Examiner has any questions regarding this amendment or the present application, the Examiner is cordially requested to contact Michael Downs at telephone number (203) 461-7292 or via electronic mail at mdowns@walkerdigital.com.

Respectfully submitted,

January 30, 2006

Date



Michael Downs
Attorney for Appellants
Registration No. 50,252
mdowns@walkerdigital.com
(203) 461-7292 /voice
(203) 461-7300 /fax